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Brokers' Right to Commissions.— Holmes v. *Neafie et al.*, 24 Atlantic Reporter 1096 (Penna.) This was a suit brought by a broker to recover commission for negotiating a contract, he having brought an intending purchaser and a ship builder together, thereby effecting a contract for the construction of a steam vessel. It is unusual, in negotiations of this description, to employ a broker; the terms of a contract are usually determined by the parties themselves. But, in this case there was this additional circumstance that, before the contract was awarded to the ship-builder represented by the broker, he was required to make bids and enter into competition with other builders. The court held that the mere fact that the ship-builder was required to enter into competition with other builders before the contract was awarded to him does not deprive the broker of his right to commission.

Carriers of Goods—Liability as Warehousemen—Failure to Deliver—Fire—Proximate Cause.— East Tennessee, V. & G. R. R. Co. v. *Kelley*, 20 S. W. Rep. 312 (Tenn.) Kelley purchased five barrels of whisky in New York and had the same consigned to himself at Chattanooga. Plaintiff in error was the last carrier over whose line the goods passed. On the 24th of April, 1891, the whisky was unloaded and stored in defendant's depot at Chattanooga. Twice each day, from the 25th to the 28th of April, 1891, Kelley, through his drayman, called at the depot demanding the whisky. Each time the agent met him with the reply that it was not there. On the morning of the 29th the depot was burned. The whisky was destroyed in the fire. Three important points are passed upon by the court in this case. The first is: Under the existing state of facts was the railway company liable as a carrier or as a warehouseman? Caldwell J. after referring to the fact that the authorities were in irreconcilable conflict on this question, stated the position of the Tennessee courts to be that the railway company was acting as a warehouseman in this instance and was therefore liable only for negligence. The second point is: Was the refusal, upon demand to deliver the goods, negligence on the part of the railway company? The court held that it was a clear case of negligence. But this negligence did not cause the fire

and it was the fire that destroyed the goods. The third point is: Was this negligence the proximate cause of the loss of the goods, when it was shown that the cause of the fire was not on account of negligence on the part of the railway company? In answer to this question, the court says: "The neglect and wrongful detention of the goods and that alone exposed them to the fire, and but for that detention, they would not have been destroyed though the fire did occur. Thus it becomes obvious that the negligence of the railway company was the proximate cause of the loss. The casual connection between the failure to deliver the goods and the injury to the plaintiff is complete."

Costs — Who Liable for. — *Foster* v. *Verner*, 25 Atl. Rep. 174 (Pa.). On the dismissal of a bill in equity it was decreed that the parties should jointly pay the master's fees. The plaintiff was insolvent and hence defendant would be liable for the whole amount. The court held that as the plaintiff failed to sustain his bill it was unjust for defendant to pay all the costs, and the decree should be so modified that each would pay an equal part; for though in this case the master could not recover any portion from the plaintiff, yet it would be unjust to remedy the difficulty by throwing all the costs of the protracted litigation upon the defendant.

Surface Water Drainage — Construction of Railroad. — *Staton* v. *Norfolk & C. R. Co.*, 16 S. E. Rep. 181 (N. Carolina). The defendant constructed a ditch along its right-of-way, such ditch being necessary to the operation of the road, and carefully constructed. Through this channel, surface water, being diverted from the direction in which it naturally flowed, was conducted and finally emptied into a natural water course, whereby the plaintiff's land was overflowed. The railroad company was held liable for the damage thus inflicted, the court following *Jenkins* v. *Railroad Co.*, 15 S. E. Rep. 193, where it said that "a railroad company enjoys the same privileges as any other land-owner, but no greater, to be exercised under the same restrictions and qualifications." To the proposition urged by the defendant that inasmuch as the legislature had authorized the construction of the road an adjacent proprietor could not recover for any damage incident to such construction, provided the work was necessary and properly done, the court replied that such a ruling would make an exception to the maxim *sic utere tuo*, etc., in favor of railroads. And although North Carolina is the only State in the

Union that does not expressly provide that "private property shall not be taken for public use without just compensation," nevertheless the principles of justice derived from Magna Charta and embodied in the common law of the State must prevail. Moreover, had the immunity from liability, claimed by the railroad, been expressly granted by statute, such legislation would have been in conflict with the constitutional rights of the people, and therefore void. The point urged by the railroad company, and decided against it, seems never before to have been passed upon.

Elections — Destruction of Ballots after Counting — Evidence. — *Commonwealth* v. *Ryan*, 32 N. E. Rep. 349. This was an indictment for altering a ballot in the State election of Massachusetts in the fall of 1891. The statute of Massachusetts provides that the "City and town clerks shall receive the envelopes containing the ballots thrown at any election, sealed as hereinbefore provided, and shall retain them in their care until the requirements of the law have been complied with; and, as soon as may be thereafter, said clerks shall cause such ballots to be destroyed *without examining them*, or *permitting them to be examined.*" The court held that such ballots can be retained for any length of time for the purpose of *defending or supporting a criminal charge*, and that the phrases, "without examining them, or permitting them to be examined" are not applicable in case such ballot is needed to defend or support a criminal charge.

Methods of Calling Meetings Under a City Charter. — *Russell* v. *Wellington et al.*, 31 N. E. Rep. 630 (Mass.).—The decision in this case depended on the construction of a clause in the city charter, viz: the Mayor "may call special meetings of the City councils * * * by causing notice to be left at the usual place of residence of each member of the board." *Query*: Was a meeting legally called where a member was personally notified and not at his residence? The court said: It was required that notice should be left at the member's residence since personal notice might be impossible, but in case of doubt that a written notice so left was good notice whether it was received by the member or not. Personal notice is really the most effectual way of serving, and if sent through the post-office and received by the member on the street it would be as valid as if delivered at his residence. The clause is not mandatory in any such sense as to exclude personal notification. Knowlton J. dissents however, saying: In calling special meet-

ings of a city council all provisions of the charter must be strictly obeyed. (1 Dill. Mun. Corp. § 263, *Rex* v. *May*, 5 Burrows, 2682, and many others.) The meeting is "called" by the leaving of the notice. "It is not as if the statute said the mayor may call a meeting by determining that one shall be held and afterwards shall give reasonable notice of the call by leaving a notification at the residence of each member. Under the statute a meeting may be 'called' by doing a certain thing, and there is no authority in anybody to 'call' it otherwise." The mental act of the mayor in determining that a meeting is necessary is not the "calling" of that meeting. If it was, and the clause in the charter merely required reasonable notice to the members of such intention, the "validity of the most important transactions of cities will be left to the uncertainty and doubt arising from oral testimony in regard to the methods * * * which a mayor at any time chooses to adopt in calling a special meeting."

Name—Middle Initial a Part of.—German National Bank v. *National State Bank*, 31 Pacific Reporter 122 (Colorado).—In this case it is directly decided that the middle initial is a part of a man's name, it being held that a garnishee is unaffected by a notice served on him in which the middle initial of the person named is different from that of a person to whom he is indebted—he having no knowledge that his debtor and the person named in the notice are the same. The language of the court is as follows: "The wide extension and rapid increase of population, the great and unprecedented growth of commercial transactions have compelled the use of different forms, and the adoption of different methods to distinguish individuals. The middle name, or the middle letter, is as much a part of a man's name in this part of the present century as either his Christian or his surname."

Refusal to accept Railroad Ticket.—Chicago & E. I. R. Co. v. *Conley*, 32 N. E. Rep. 96 (Ind.). A man bought a round-trip ticket between Newport and Terre Haute, Indiana. On reaching Terre Haute he accidentally wet the return ticket and the color came out. On making the return trip some days later he tendered this ticket which was the same as when he bought it except for its color. The conductor refused to take it and endeavored to put him out for not paying his fare, without allowing him to make any explanations. He paid the fare under protest and now recovers not only that but damages for the humiliation. Whenever it appears that a man is endeavoring to ride

on a train on an injured ticket the conductor is bound to hear his explanation.

Riparian Rights.— New York Cent. & H. R. R. Co. v. *Aldridge*, 32 N. E. Rep. 50 (N. Y.). The Hudson R. R. Co. received by grant in its charter, the power to lay out a railroad on the east bank of the Hudson river and the land selected for this purpose was appraised and conveyed to the company. The question was, whether a railroad company owning a right of way along a river-bank was an owner of the "adjacent uplands" in such a sense as to make it, by statute, a riparian proprietor. Other questions of interpretation of charter arose and were considered in the same opinion. The New York Court of Appeals sustained the decision of the Supreme Court by holding that the railroad company was not the riparian proprietor, but he through whose hands the right of way had been granted. The reason was, that grants of land under water had been made to those owning the adjacent uplands, in order to increase the commerce of the State, as by building docks, etc. The court said that this reason would fail in the case of a railroad company authorized to do railroad business only, because, so limited by charter, it could not increase the commerce of the State in the way intended. Also "the limitation placed by the statute upon the use of this strip of land by the railroad company, precludes the ordinary consequences from attaching to a conveyance in fee of land."